



ADMINISTRATION FOR
CHILDREN & FAMILIES

Office of Refugee Resettlement | 330 C Street, S.W., Washington, DC 20201
www.acf.hhs.gov/programs/orr

DATE: March 16, 2018

TO: E. Scott Lloyd, Director, ORR

FROM: Jallyn Sualog, Acting-Deputy Director for Children's Programs, ORR

SUBJECT: Florida Department of Children and Families Unresponsive to ORR Request for CA/N Checks – **OPTIONS**

Issue

The Office of Refugee Resettlement (ORR) needs to decide how to proceed with an outstanding request for child abuse and neglect (CA/N) checks pending with the Florida Department of Children and Families (DCF) for certain contract employees of an influx care facility (ICF).

Background

The ORR contractor is in the process of hiring direct supervision staff for the ICF at the Department of Labor's former Homestead Job Corps site in Homestead, Florida. ORR care providers are required to complete background checks prior to hiring employees, including CA/N checks, under ORR's Interim Final Rule (IFR) for Standards to Prevent Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied [Alien] Children.

Specifically, the IFR requires at 411.16(a) that:

"Care provider facilities are prohibited from hiring or promoting any individual who may have contact with U[A]Cs and must not enlist the services of any contractor or volunteer who may have contact with U[A]Cs and who engaged in: sexual abuse in a prison, jail, holding facility, community confinement facility, juvenile facility, other institution, or care provider facility; who was convicted of engaging or attempting to engage in sexual activity facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or who was civilly or administratively adjudicated to have engaged in such activity [emphasis added]."

The last clause of 411.16(a) referring to prohibitions on hiring anyone who was "civilly or administratively adjudicated to have engaged in [sexual abuse]..." effectively requires (what are commonly referred to as child abuse and neglect checks) be performed for all staff with direct contact with UAC.

CA/N checks are performed by state authorities and there is currently no federal or national repository for these types of records.

In the past, the state of Florida has been unwilling to perform CA/N checks for employees of the Homestead ICF or share results with either ORR or the contractor. The Florida DCF has relayed via memo that Florida law prevents CA/N information from being used for employment screenings with few statutory exceptions. According to previous correspondence with DCF, the contractor operating the ICF does not fall under one of the statutory exceptions.

Based on the Florida DCF's refusal to provide CA/N checks, ORR has sought a waiver from the CA/N check requirement under the IFR. Section 411.10(c) of the IFR provides the ORR Director with the authority to waive or modify requirements in the IFR for an emergency care provider facility (the term used in the IFR for an ICF) for good cause.

"The Director [of ORR], however, may, using unreviewable discretion, waive or modify specific sections for a particular emergency care provider facility for good cause. Good cause would only be found in cases where the temporary nature of the emergency care provider facility makes compliance with the provision impracticable or impossible, and the Director determines that the emergency care provider facility could not, without substantial difficulty, meet the provision in the absence of the waiver or modification."

The temporary nature of emergency care providers and Florida statute prevent Homestead from complying with the civil or administrative adjudication check required under 411.16(a). Homestead would not be able to meet the requirements of 411.16(a) "without substantial difficulty".

The previous administration approved waivers from the CA/N check requirement under the authority of 411.16(a) based on the substantial difficulty of obtaining the results from the state and the temporary nature of the facility itself.

Discussion

Based on guidance from the Office of the Director, DPP staff asked the Florida DCF General Counsel's office the following two questions on February 6, 2018:

- (1) Whether the DCF would provide CA/N checks and provide results of those checks to ORR or the contractor for prospective employees of the Homestead ICF?
- (2) Alternatively, where there are any statutory or regulatory bars whether the state would waive those limitations in the interest of protecting children?

A DCF official replied the same day stating that DCF general counsel attorneys were looking into the matter. ORR has followed up with Florida DCF General Counsel's office on several occasions and has not received a response.

The ORR contractor has started hiring employees for deployment at the Homestead ICF. At this time CA/N checks are not being conducted however criminal background checks are being performed. At this point, ORR will either need to waive CA/N checks for these employees entirely,

or waive them on a temporary basis until the results of the CA/N checks are obtained. The CA/N check issue must be resolved prior to the deployment of personnel at the site in anticipation of UAC arrivals on March 24, 2018.

Options

- 1) Have the ORR Director issue a waiver to IFR under authority found in 45 C.F.R. 411.16(a).
- 2) Request assistance from ACF leadership to pursue a response from the state of Florida regarding ORR's CA/N check request.

Recommendation

ORR plans on opening the Homestead ICF on March 24, 2018. Based on the imminent opening of the facility the Director is advised to choose option 1 and issue a waiver of the IFR requirement. Additionally, issuing the waiver now does not prevent ACF from following up with Florida DCF to respond to ORR's original request.

Decision

Option 1 - but pursue issue with FJ

Option 2

Other

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3/22/18

Date

